

Atty Docket No. PC19461A
Appl. No. 10/521,336
Reply to Office action of 11/15/2006

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REMARKS/ARGUMENTS

Claims 24-44 are pending, claims 1-23 are canceled.

The pending claims were rejected under 35 USC § 102 as anticipated by Hayakawa et. al., reference AF cited on the Information Disclosure Statement filed 01/12/2005. The Examiner concluded that because Hayakawa disclosed a fermentation broth containing at least one species of *Microbispora* that "there is a reasonable expectation that broth contains the compound of the claimed invention." Applicant responds that a possibility of the existence of a compound, based on the Examiner's scientific speculation, but not in fact documented, is not an appropriate grounds for rejection under 35 USC § 102. Only if the compound was in fact identified as made by the broth would it be appropriate to make an anticipation rejection based on this reference. However, solely in the interest of obtaining a speedy allowance of the amended claims, Applicant herein amends claims 24-29, as above, to refer to a compound "isolated from Microbispora sp. ATCC PTA-5024" as suggested by the Examiner. Claims 24-44 should now be in condition for allowance.

The claims are also subject to a provisional type Double Patenting rejection. Applicant believes the rejection is premature. Should any of the pending claims in the various divisional applications be allowed and not subject to a restriction requirement, then Applicant would be willing to consider filing a terminal disclaimer if appropriate.

Respectfully submitted,



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